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Insurance

Maynard Jackson

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INSURANCE

MAYNARD H. JACKSON

50¢

Composition and Theme Filler

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CHAMBLEE, GA.

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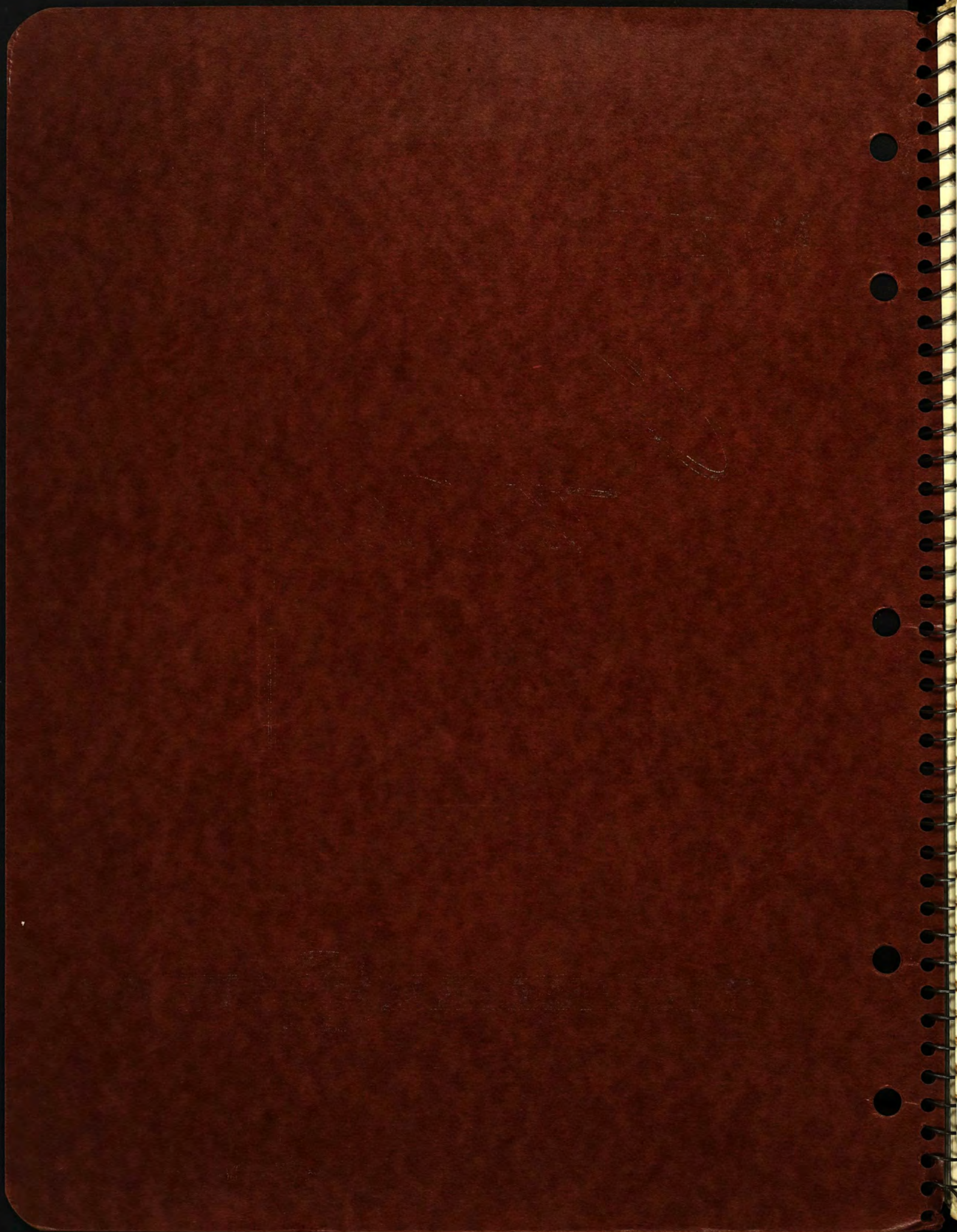

Returned copy from Jackson

Final Examination

INSURANCE

Mr. M. E. Johnson (Two-hour course) January 25, 1963

I leave at 9:00

A hatchery engaged in the business of selling young chicks to customers operating chicken farms for the production of eggs guaranteed to its customers in writing that 95% of all baby chicks purchased from it would be pullets if said purchases were for 100 or more at a time. In the event that more than 5% of said purchases were roosters, the hatchery agreed to refund a stipulated amount for each rooster above 5% of the number of chicks purchased, and the purchaser could retain all the chicks.

Was this a contract of insurance? Give your reasons for or against.

II leave at 9:30

P, a resident of State X, obtained a life policy from D Company on the life of P. D Company was authorized to do business in State X at the time of issuance and delivery of the policy, but was a C State corporation. Subsequently, P moved from State X to State Y where he continued to pay his premiums by mail until his death.

D Company had never done any business in State Y except accept premiums by mail from P, and refused to pay the beneficiary on grounds the terms of policy had been breached. The beneficiary then brought action in State Y and served the D Company by service of process on the State Commissioner of Insurance under The Uniform Unauthorized Insurer's Act. D Company did not defend the suit and P obtained judgment by default. P then sued on the judgment in State X where D Company had property and D Company defended the action.

What defense, if any, did D Company have, and what should be the outcome of the action?

III leave at 10:00

D owed C $1,000 on an unsecured loan and C procured an insurance contract on the life of D for $2,000 and paid the premium until the death of D, six months later at which time the debt had not been paid. The insurance company refused payment and tendered the premiums paid.

C brought action for face amount of policy.

Assuming that all pertinent issues are raised, how should the court rule? Why?

ins. ite[illegible]
reason

IV *leave at 10:30*

A's auto collided with B's car at an intersection and it was not agreed between the parties whose negligence was the sole and proximate cause of the damages to B's car in the amount of $500.

B had $50 deductible collision insurance on his car and informed A that he was going to turn the matter over to his insurance company, whereupon A persuaded B to release him for the $50 B would have to pay. Upon payment of $450 to B for the coverage under the policy, the insurance company brought action against A for recovery of the sum paid to B.

What are the rights of the parties? Why? *B – ins.co. Ins.co. – A B – A*

V *leave at 11:00*

ins. interest reason – H insured his life in two different policies and named W, his wife, beneficiary in both policies. Several years later H and W separated and in order to punish W, H properly executed the required forms for a change of beneficiary to a female donee and obtained the insurer's endorsement on the policy and neither the insured nor the insurer gave notice to W. H then assigned the second policy to a creditor as security for a loan and the creditor notified the insurer of the assignment. H permitted the assigned policy to lapse for non-payment of premiums and no notice was given to the assignee or the beneficiary (W) of the premiums due.

At the time of H's death the premiums on the policy in which the beneficiary had been changed were paid up to date.

What are the rights of all parties concerned? Explain.

VI *leave at 11:30*

Suppose A has insured against fire his mercantile goods "while contained in" a building at 402 Fayetteville Street, Durham, North Carolina, and A subsequently moves the property to 408 Fayetteville Street, Durham, North Carolina, in a building that has a better fire rating and the property is lost by fire.

Should A be permitted to recover from the insurer? Explain.

2

(2.) K of liability Ins. — protection against having to reimburse a third party.

(3.) K for Life Ins. — accident, health, etc. re the life of the insured.

State ex rel. Duffy, Atty. Gen. v. Western Auto Supply Co. (p.3)
(Ohio, 1938)

An action quo warranto (an extra-ordinary writ to show cause why a franchise should not be revoked due to alleged abuse of the franchise). Atty. Gen. alleged the D was abusing a privilege by selling ins. w/o a franchise to sell ins. D says it is not selling ins. but merely warranting the tires they sell.

Ins. v. Warranty —

Insurance is based on spreading the risks upon a scientific basis.

"A Warranty is fortuitous. It promises indemnity against defects in the article sold, while ins. indemnifies against loss or damage resulting from perils outside of and unrelated to defects in the article itself."

Ct. in Duffy Case said that since the warranty here indemnified against "all defects," this was insurance. This was a strict interpretation. It involved no risk to the buyer, therefore helping finding of insurance.

Notes after case, p.8 —

State has the right to regulate big and little ins. businesses.

D "goes further and undertakes to indemnify the owner of such tires against ALL ROAD HAZARDS (EXCEPT FIRE AND THEFT) which may render his tire unfit for service." Thus, this could include even collisions, whether resulting from negl. of the owner or another. Thus, this = insurance.

"Even if such K is an incident in the sale of merchandise, and its use therein does not constitute the biz of insurance, it, in effect, is a K "substantially amounting to insurance" w/in the meaning of (the statute)."

An EXPRESS WARRANTY is any affirmation of fact or any promise by the seller relating to the goods ~~is an express warranty~~ if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon.

* Essential Conds. of a Successful Ins. Plan –

(1.) Risk of real loss beyond the power of I^ed or Ier to avert or hasten.

(2.) Large no. of persons must be liable to the like risk. Must have suf. large number to make the premium reas. under the circumstances. Otherwise, the premium would be prohibitive.

(3.) The casualty contemplated must be likely to fall on a comparatively small number of persons exposed to the risk of it.

(4.) The probabilities of its occurrence must be capable of being estimated beforehand w/ some approximation of certainty.

(5.) The loss apprehended must be so considerable when it does occur as to be worth providing against.

(6.) The cost must be comparatively so small as not to be prohibitive.

In this case, elements #3 and #5 are probably lacking.

Assignment: read Ch. I + 2 other cases.

(Notes: 9-27-62)

In the Duffy Case, the agreement contained conds over wh neither the buyer nor seller had control. Thus, insurance.

TO CONSTITUTE INS. THE PROMISE NEED NOT BE ONE FOR THE PYMT. OF MONEY, BUT MAY BE ITS EQUIVALENT OR SOME ACT OF VALUE TO THE INSURED UPON THE INJURY OR DESTRUCTION OF THE SPECIFIED PROPERTY.

Problem #3, p. 9 - This would not be insurance because they could exercise control over the risk. They could control errors.

Problem #4 - held, it was ins. because of lack of control over burglaries. If the company had guaranteed that the watch would run for 10 years, that would not have been ins.

State ex rel, Herbert v. Standard Oil Co. (p. 10)

D proposed to warrant different grades of tires for one year. (This case was in Ohio, same as Duffy Case.) D said they will replace tire if it does not last for one year because of normal wear and if due to any shortcomings of workmanship.

— This was a mere warranty. D has made sure to draft this K w/in the rules in view of the Duffy Case.

Since it was a time limitation, it was no K of ins. here. D had some control, too, because the workmanship could have been good enough to last over the period of one year.

6

(Page 15): Statutory Definitions of Ins.
Two types of statutes:
(1.) Prohibitive — all kinds of ins. require a license —
(2.) Limited — some kinds ...

NOTE 1: Borderline case. This includes a warr., but its a little too broad to exclude insurance.

NOTE 2. Rule of Law — [Life insurance does not indemnify because it does not seek to place value on life and to make whole.

Annuity and mortuary tables are statutory, and they must be consulted to determine the amt. of liability damages under a liability insurance policy based on the life expectancy of the decedent. These tables are used only in cases of death.
* They are also used to determine present value of a life estate (important in urban renewal).

[In N.C., there is no dower due to a statute of July 1, 1960.

( )

(NOTES: 10-2-62)

58-3-"K of Ins. - A K OF INS. IS AN AGREEMENT BY WHICH THE INSURER IS BOUND TO PAY MONEY OR ITS EQUIVALENT OR TO DO SOME ACT OF VALUE TO THE INSURED UPON, AND AS AN INDEMNITY OR REIMBURSEMENT FOR, THE DESTRUCTION, LOSS, OR INJURY OF SOMETHING IN WHICH THE OTHER PARTY HAS AN INTEREST."

Statutory Provisions -

In N.C., see Chap. 58 and its pertinent sections. This stat. says (G.S. 58-3): "an agreement by wh the Ier ... in wh the other party has an interest."

In Ins. law, the insured must have an insurable interest. If this were not true, it would result in a big gamble and even jeopardize lives. However, A could insure his life, make B bene., and have B pay premiums.

N.C. - WARRANTIES

58-3.1 = In N.C., if a warr. is made for a consid. other than the price of the article, or made by one other that (sic) manufacturer or seller, that warr. would be a K of ins.

I.I. feature of ins. is that the risk is spread. N.C. (G.S. 58-39(3)) says that co., in effect, will have its risks spread so that it cannot become liable on one risk for more than 10% of its surplus.

Memorial Gardens Ass'n., Inc. v. Smith, Auditor of Public Accounts (1959, Sec.) (p. 18 cbk.)

These Ks for burial, monuments, etc. held analogous to ins. K. Like "perpetual care" cases.

Legis. required a certain amt to be put in trust w/ the State to insure perf. of these Ks for protection of the public. Ins. cos. are required to have a reserve w/ the Com'r. of Ins. of the State.

N.C. requires trust fund re perpetual care companies: $5000 initially

and $5.00 thereafter for each lot sold. This trust is administered by a bank. The requirement of initial $5500 relates to new co. in this area estab. after enactment of statute, and that cos. estab. before stat. need only put in the $5.00 per sale. That $5.00 will be put in the trust fund upon passing of title to the party buying.

WHILE P IS NOT A MUTUAL CO., IT IS STILL EVIDENT THAT THE BENEFITS TO ITS "MEMBERS", AS RECITED, EMBRACE INDEMNITY V. EXPENSE RESULTING FROM THE OWNERSHIP, MAINTENANCE OR USE OF AN AUTO & ARE TO THAT EXTENT W/IN THE MEANING OF THE WORD INS. AS USED IN THE INS. CODE.

Continental Auto Club, Inc. v. Navarre, Com'r. of Ins. (p. 24)
Club providing for atty. costs to "members." Three problems in the auto club cases:
(1.) Ins. problems
(2.) Ethics: whether the club is practicing law. Atty-client supposed to be personal relationship.
(3.) Taxes - when must club pay?

Notes (Problem) #1, p. 26:
K makes the diff., not what "club" calls itself. So, it makes no diff. what group calls itself for these purposes.

#2 - from the Mich. Code, Ch. III.

Problem #1, p. 26 -
No. There was no promise & no arrangement made in advance of death.
#2 - close question. Strictly speaking, it is insurance. Close to question of burial societies wh are regulated.

Cruthers v. Neeld, Deputy Director (p. 27)
The element of risk is lost in annuity Ks. In a LIFE INS. AGREEMENT the insurer loses in the event of the pre-

Refund Annuity Ks v. life ins. Ks.
Annuity = K whereby you invest and get return on your investment usually not exceeding amt. of investment.

mature death of the insured, but the only risk encountered by the insurer in an ANNUITY K, except for the possibility that the annuitant may outlive his expectancy, is an ~~insur able~~ investment risk that the capital may shrink in value or that the return may be less than the amounts payable to the annuitant.

Under a refund annuity K, there is no real risk of loss to the "insurer." Under life ins K, insurer has risk of losing more than it received from the insured. Held, these were retirement annuity K's used for the TRANSMISSION OF PROP. IN LIEU OF TESTAMENTARY DISPOSITION.

(NOTES: 10-4-62)

Insurance K v. Annuity K

(p. 37)

Issue: whether this was life ins. and whether, ∴, widow would have to pay succession tax on it as part of decedent's estate. ?? Held, no.

Technically, no ins. here, but an investment by decedent.

Ct. said "the bene. acquired an interest in the K's wh could only take effect in beneficial poss. and enjoyment at or after the death of the decedent."

If decedent pays premium and had other rights like power to change bene. or collect cash benefits, then that would not be ins., and would be taxable upon "insured's" death. Ins. is not subject to inheritance taxes and not considered part of decedent's estate.

Assign: Chap. 2 for next hour.

Cruthers case –

Here, no ins. K because the element of risk of loss is absent. * In a life ins. agreement the Insurer loses in the event of the premature death of the insured, but the only risk encountered by the Insurer in an annuity K, except for the possibility that the annuitant may outlive his expectancy, is an investment risk that the capital may shrink in value or that the return may be less than the amounts payable to the annuitant.

Held, these were retirement annuity Ks used for the transmission of prop. in lieu of testamentary disposition.

G.S. 105 (N.C. - special exemption from decedent's estate of insurance).

The making of annuity Ks is not confined to licensed ins. cos.

* (Chap. II)

Governmental Supervision of Insurance

Govt. seeks to regulate ins. for protection of the policy holders.

State ex rel. Amer. Indemnity Co. v. Brown (p. 35)

Mandamus → Action for mandamus (a writ directed to the court to order an official of a state or a lower court to do something).

State of Minn. had stat. prohibiting ins. cos. from selling two types of ins. on one type is fidelity ins. Ins. co. had no real intention of selling both types, but state contended that it still was in violation of the stat. by selling two types in Texas.

Issue: "whether under the laws of this state (Minn.) a co. writing fire and tornado ins. elsewhere than in this state may be licensed to conduct a fidelity business here?" Held, No.

The Co.'s articles of incorp. and the state of Texas allowed the co. to transact the two types of ins.

The legis. there (in Minn.) probably enacted the stat. because it feet that the tornado ins. was highly hazardous and that the fidelity policyholders may wind up absorbing, thru premiums, the losses due to tornadoes.

A domestic corp. would not have been allowed to do both types of ins. w/o boundaries of Minn. although confining itself to one or the other of those classes w/in the State.

"If what a foreign corp. does outside the state constitutes a hazard to the people of this state, the legis. is w/in its Constitutional rights in denying it admission to this state. We see no violation of the Federal Constitution in such a course."

N.C. G.S. 20, ch 224 - 279 - sets out requirements under motor vehicle insurance — compulsory ins.; and misdemeanor for driving w/o ins.

(p. 39) Calif. State Auto. Ass'n Inter-Ins. Bureau v. Maloney

Compulsory ins. in Calif., and state required all ins. cos. to accept assigned risks on a pro rata basis.

Ct. held that state may supervise ins. in the state.

The broad sphere of police power is peculiarly apt. when the biz of ins. is involved — a biz to wh. the govt. has long had a "special relation."

Trend in govt. is to regulate and control where private enterprise fails to do an adequate job. — See Notes, p. 42 (T.I.)

See note 4 on p. 38: Three main classes of Ins. Co. powers: (1.) Life (2.) Fire and Marine (3.) Casualty

State reg. of the Ins. biz has been upheld in a wide variety of circumstance against the claim that the law violated the Due Process Clause of the 14th Amend.

Ct. said here: "Appellant's biz may of course be less prosperous as a result of the regulation. That diminution in value, however, has never mounted to the dignity of a taking in the constitutional sense."

Co. here, too, was allowed to charge assigned risks larger premiums.

McGee v. International Life Ins. Co. (p. 44.)

(Assign. read 40 pages for 10-9-62.)

In the absence of a stat. imposing a duty upon insurers to accept and insure all qualified applicants, it has been generally assumed that an insurer is NOT under such a duty.

Facts:

P = resident of Calif.

D = Corp. w/ principal place of biz in Texas.

P is benef. under ins. K made by her dead H w/ D's assignor, an Ariz. ins. co. D had no agents in Calif., had never solicited in Calif. Premiums were paid by mail to D after D issued H reinsurance certificate.

P v. D in Calif. on K of ins. J/P. D was served in Tex. by registered

Ins. co. was held to have been "doing biz" in Calif.
Ins. co. lost any defenses it may have had by failing to appear in the Calif. case.

NOTES, p. 47:

1. Yes. Would have to deter. whether the non-resident ins. co. was "doing biz" in State X.

Quaere — Could P have orig. sued the ins. Co. in a Tex. Court??? Remember that P had not done any biz in Texas w/ the company.

3. Uniform Unauthorized Insurer's Act — doing unauthor. ins. biz in the State, the unauthor co. shall be deemed to have appointed Commis. of Ins. as its agent for the service of process.

mail. Calif. statute specifically provides for situation on foreign corp. is being sued on ins. Ks and subjects such corps. to suit in Calif. — Unable to collect judg. in Calif., P (petitioner) v. D in Texas on the Calif. judg. Texas ct. refused to enforce P's judg. & held it void under 14th Amend: because service had been w/o Calif. & that the Calif. ct. had no juris. consequently. P appealed to U.S. Sup. Ct.

MINIMUM CONTACTS TEST

Held, under *International Shoe Co. v. State of Washington*, 326 U.S. 310, "due process requires only that to subject a D to a judgment in personam, if he be not present w/in the territory of the forum, he have certain MINIMUM CONTACTS w/it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'."

It was suff for purposes of due process that the suit was based on a K wh had substantial connection w/ that state.

The fact that the Calif. stat. was enacted after the making of the K is immaterial: "The statute was remedial, in the purest sense of that term, and neither enlarged nor impaired respondent's substantive rights or obligations under the K." The ins. co. "had no vested right not to be sued in Calif."

The "minimum contacts" rule applies to corporations and defines "doing biz."

NOTES: 10-9-62

TWO TYPES OF ANNUITIES:
(1.) FIXED
(2.) VARIABLE

F.T.C. v. National Casualty Co. (p.48)

Sec. 2(b) McCarran - Ferguson Act was intended to make ins. biz regulable by Fed. Govt. only where the state fails to regulate that matter.
Ct. held the state did regulate ins. here.

VARIABLE ANNUITY: (1.) PREMIUMS collected are invested to a greater degree in common stocks + other equities.
(2.) Benefit pymnts. vary w/ the success of the investment policy.

S.E.C. v. Variable Annuity Life Ins. Co. (p.51)

Held, this was not ins. and ∴ was subject to the Securities Act of 1933 and the Ins. Cos. Act of 1940.
No guarantee of return in variable annuities. The co. takes no real risk of loss or liab. because it guarantees no definite return.
Strong dissent here.

Notes, p.60 - there seems to be a real split among authorities.

...al Societies

Jenkins v. Talbot (p.61)

Can govt. regulate the society here against will of some of its members? Held, yes.

...ht to Amend ...aws and ...se ...essments

The ct. declared that the society was privileged to amend its by-laws, "even to increase assessments," provided such amendments are not arbitrary and unreasonable."
Reorganization was necessary to avoid bankruptcy, but the rights of all must be protected.
There was no violation of K rights because but for the reorganization there would have been inevitable ruin, and there can be no vested right in a disaster.

F.T.C. v. National Casualty Co. (p. 48)

ACTION: To set aside cease-and-desist orders of F.T.C.

Facts: F.T.C. issued orders above re certain advertising practices found by F.T.C. to be false, misleading and deceptive in viol. of F.T.C. Act. These orders seek to proscribe activities w/in States wh have and wh do not have statutes v. unfair + deceptive ins. practices. Ct. below held that the orders should be set aside as in conflict w/ McCarran-Ferguson Act wh prohibits the F.T.C. from regulating such practices w/in the States having these statutes.

Respondents (D here + Amer. Hosp. + Life Ins. Co.) sell health + accident ins. D is licensed in all States + D.C. + Hawaii. Solicitation by independent agents. Advertising matter shipped in bulk to the agents who distribute the material at their own cost.

Issue: Whether the legis. intended to preclude the F.T.C., under the McCarran-Ferguson Act, from regulating matters re ins. practices w/in States wh have their own regulatory statutes?

Held: Yes. J/D/Affirmed. Sec. 2(b) of the Act says: "... the F.T.C. Act ... shall be applicable to the biz of ins. to the extent that such biz is not regulated by State law."

(See Rule p. 49.)

Depaba v. Ludlow (p. 72)
Ct. of Common Pleas, 1720
1 Comyns 360

Action: To recover upon ins. policy (in ASSUMPSIT).

Facts: D insured P "interest or no interest" via marine ins. policy. D said P had no "prop. in the things insured.

Issue: whether the phrase "interest or no int." eliminates the necessity of proving an insurable interest and precludes the insurer from alleging a lack thereof?

Holding: Yes. "...The P has no occasion to prove his interest, and ... the D cannot controvert that.

Though the ship was here retaken, yet the P received a damage, for his voyage was interrupted; and the question is not whether the P had his ship and did not lose his prop., but what damage he sustained.

14

NOTES:

(1) S.E.C. v. Variable Annuity Life Ins. Co. of Amer. (p. 51)
Sup. Ct. of the U.S., 1959.
359 U.S. 65, 79 S.Ct. 618.

Action: By S.E.C. to enjoin D from offering their annuity Ks to the public w/o first registering them under the Securities Act of 1933, & complying w/ the Investment Co. Act of 1940: — On petition for a writ of certiorari.

Facts: D issued variable annuity Ks (amt. of return not fixed and will vary depending on returns from common stocks and other equities).
Respondent says: this is "insurance", therefore under State control only by virtue of the McCarran-Ferguson Act which precludes fed. regulation only if there is State regulation re "annuity" & "ins." Ks.
Petitioner says these are not ins. Ks because the Respondent-company takes no real risk.

Issue: Whether respondents (D here + Eq. Annuity Life Ins. Co.) are subject to regulation by S.E.C. under the two above fed. acts w/ respect to their variable annuity business?

Held: Yes. J/D/Rvsd. The concept of "insurance" involves some investment risk-taking on the part of the company. In hard reality, the issuer of a var. ann. that has no element of a fixed return assumes no true risk in the ins. sense.

(2) **Concurring Opinion (Brennan & Stewart):** The judg. should be reversed because these are investment Ks of a sort, and consistent w/ the legis. intent, there should be full disclosure of the details of the enterprise in wh the investor is to put his money so that he can intelligently appraise the risks involved. Thus, since the State system does not depend on disclosure, the Fed. govt. should regulate this matter.

Dissent: (Harlan joined by Frankfurter, Clark, Whittaker) These are insurance Ks because these involve the assumption by the co. of the entire risk of longevity — the "mortality aspects of the annuities" — and that this feature is "substantial."

This is a bona fide new development in the field of insurance, and that this should be left to the States regulation since insurance has been historically w/in the almost exclusive ~~province~~ domain of the States.

Reasoning — Mutuality requires that each shall pay for his own ins. If a fraternal society lacks mutuality in payment for the ins. afforded, it faces inevitable ruin. Surely no one can have a vested right in a disaster.

NOTES: 10-11-62 — *LEGAL REQUIREMENT OF INSURABLE INTEREST

Depaba v. Ludlow (p. 72)

This was not a wagering K even though the words "interest or no interest" were in the K.

You can insure v. hail if you have an interest which could be damaged by the hail.

This "int. or no int." clause can raise a wagering K, but here it just so happened ~~that~~ this was not a wagering K. Later, a British act said that any K. of "int. or no int." in it would be void even if there were an insurable int. — This was an attempt to stop wagering Ks.

Lucena v. Craufurd (p. 76)

Ps were commissioners apptd. by the Crown to manage ships taken from Holland "WHEN such ships and cargoes (captured by English Naval vessels) should be brought into A BRITISH PORT." Ps insured Dutch ships BEFORE port, and ships were lost on homeward voyage.

Rule of Law — Held, even the greatest probability of occurrence cannot make a mere expectation an insurable interest.

hypo: White Rock Church wants to build anew. Can't find a buyer for old church. Now, urban renewal planned + church will be paid fair market value for its building and land. Could the church insure against the outcome of the vote re the bond issue?? = No. A mere expectation.

hypo: A is 90 years old and expects to sell certain timber 20 years hence. Son of A, A-1, will take by succession, upon death of A, the timber. Does A-1 have an insurable interest before A's death?? = No. Mere expectation.

hypo: A makes inter vivos transfer of timber to A-1, reserving life estate in A. Does A-1 now have an insurable interest?? = Yes, because is was expectancy coupled w/ an existing interest (vested remainder) in that out of wh the expectancy arises.

Expectancy Coupled w/ an Existing Interest

DAMAGES

The measure of an insurable interest in prop. is the extent to wh the insured might be damnified by loss or injury thereof.

RULE OF LAW

The insurable interest must exist when the ins. takes effect and when the loss occurs, but need not exist in the

Liverpool & London & Globe Ins. Co. Ltd. v. Bolling (p.80
176 Va. 182, 10 S.E. 2d 518 (1940).

Action: To recover on a fire ins. K.

Facts: Mrs. Bolling (P-respondent) was a widow w/ kids and she insured the building in wh she ran a store, her sole livelihood. Ins. agent knew the store was owned by P's father-in-law. — Co. says she had no insurable interest.

Held: P had a vital interest. She had a pecuniary interest in continuing her biz upon wh she depended for support.

Bassett v. Farmers + Merchants Ins. Co. (p. 81
85 NEB. 85, 122 N.W. 703 (1909)

Action: To recover on "K of ins."

Facts: P bought farm, conveyed by warranty deed → wife in 1902. 1905, D insured P for 5 yrs. v. loss by fire of house on farm. 1906, house burned totally.

D: P has no insurable interest.

P: mere holding of prop. = I.I.

Issue: Whether a H who holds, as a tenant at sufferance, prop. owned by his wife has an I.I. in it?

Holding: No. J/P/Rvsd.

[Majority View] The insured must have some substantial interest in the subject insured, an interest that would be recog. and protected by the courts.

On a married woman's prop. is completely emancipated by State from H's control, "the possibility that he will receive a benefit from the real estate of wh she may die seized is not considered an insurable interest." Neb. is such a state.

(Inadequate proof here by P.)

meantime.

RULE OF LAW: VOID INS. Ks

Any K stipulates for the pymt. of loss whether the person insured has or has not any interest in the prop. insured, or ~~that~~ the policy shall be rec'd. as proof of such interest is void.
See Ga. Ins. Code §56-2405 (1960).

16 OCT. 62

Liverpool + London + Globe Ins Co. v. Bolling (p.80)

Ct. here held that the P-respondent (the widow) had a vital pecuniary interest.

This is a little broader than the usual proposition.

The widow was allowed to recover the full amt. written on the **building**.

She was merely a tenant at will.

Bassett v. Farmers + Merchants Ins. Co. (p.81)

Legal presumption here would be a gift, w/o more appearing.

The husband could have made sure his wife would take the prop. at his death w/o the trouble of testate succession by conveying a fee to his wife retaining in himself a life estate, the wife's remainder to vest ~~[illegible]~~ in poss. upon his death.

A different conclusion could have been reached here if the ct. had considered that it was the intention of husband to retain a life estate.

Any change in the orig. ins. policy is done by a "rider" attached to the policy. This rider (e.g.) to change beneficiary would be endorsed.

Kludt v. German Mutual Fire Ins. Co. (p. 83)

"Neither a legal nor an equitable interest in the prop. is necessary. It is suffi that the insured holds such a relation to the property that its destruction involves pecuniary loss to him. (Same facts as Bassett)

This is a minority view.

See Notes, p. 83, 84.

What is tenancy by the entireties? That estate shared by husband and wife.

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Nelson v. N.H. Fire Ins. Co. (p. 85)

P could not insure this because she knowingly purchased a stolen trailer. She did not have an insurable interest, and had the ct. found otherwise it would have supported thievery.

Note 1, p. 89 -

Insurer has no standing to assert that the car was stolen. Only the true owner could recover the car from B.

(p. 90) National Filtering Oil Co. v. Citizens Ins. Co.

Ct. held he had an insurable interest because he had a legally ~~insurable~~ enforceable right not a mere expectation. P had a royalties K w/ D and his income from royalties was directly dependent upon the continuation of biz by the co.

P had an insurable interest in his K rights. P actually insured his royalties.

Notes 1, p. 93 – yes, he would have had no insurable interest in the refinery itself.

Macaura v. Northern Assurance Co. (p. 94)

Stockholder has no insurable interest in the corp. even tho he is the sole stockholder, w/o more.

Ct. said there was no suffi connection here w/ the res insured. See p. 95 for rationale.

Notes: p. 97 An unsecured creditor = no I.I. But, an " " has I.I. in the deceased debtor's property.

Creed v. Sun Fire Office of London (p. 97)

Ct. allowed recovery by the unsecured creditor here.

A creditor has an insurable interest in the prop. of the estate of his deceased debtor, wh may be subjected to his debt, the personal property being insuffi to pay the debts of the estate.

Brooklyn Clothing Corp. v. Fidelity (p. 99)

BAILMENTS

Ct. required proof of the legal liability of P to his bailor, but Ct. did say that D was liable to P because there was "legal liability" since those words include Kual obligations of P to the third party, Fox, based on custom.

A Bee may insure in his own name, for their full value, the goods intrusted to him, + upon proof of loss he may recover their full value, not exceeding the sum insured, holding the

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NELSON v. NEW HAMPSHIRE FIRE INS. CO. (p. 85)
263 F.2d 586 (U.S. C.C.A., 9th, 1959)

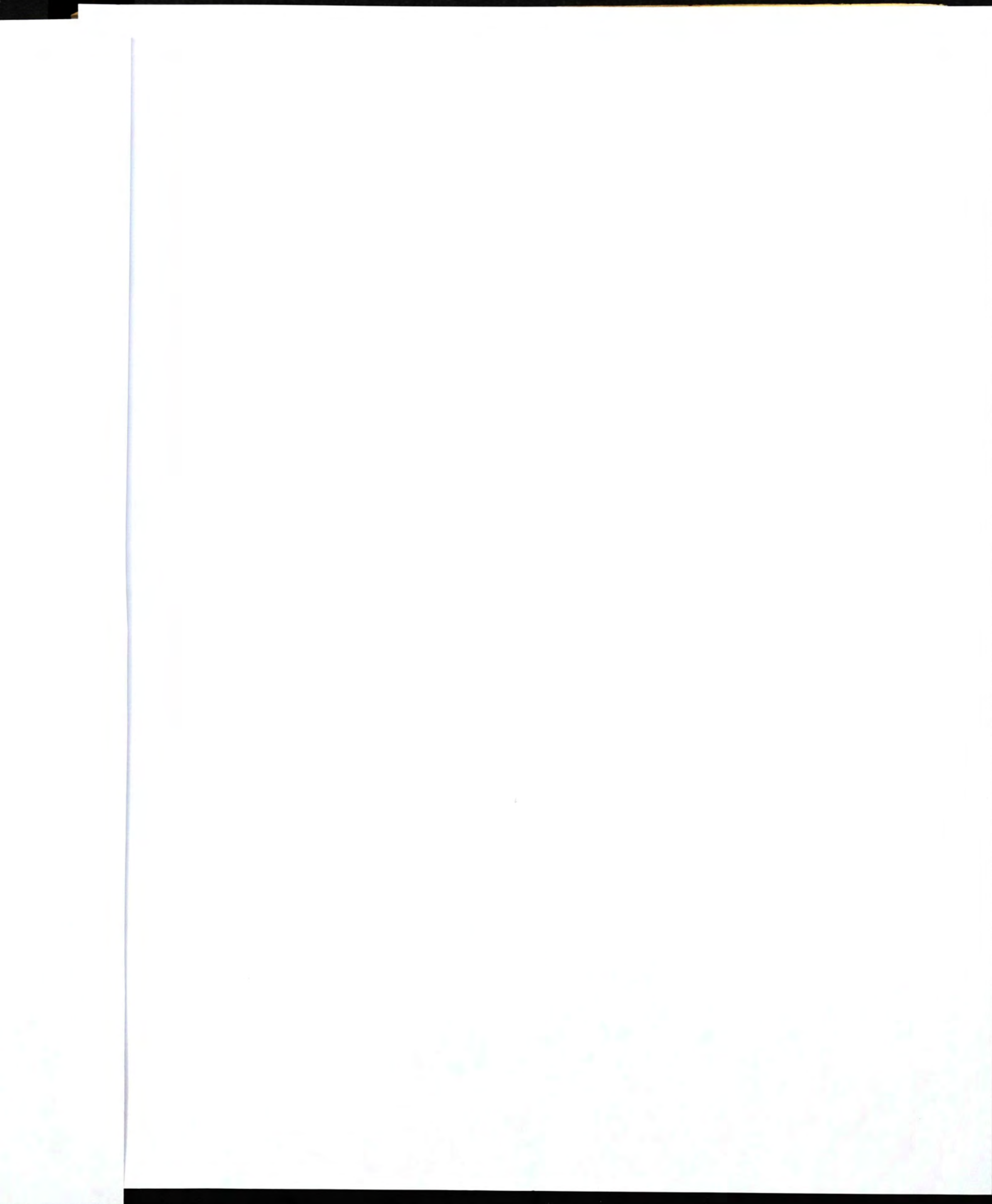
Action: Ex contractu.

Facts: P bought ca. $6000.00 trailer for $2000.00 from Eee of trailer's T.O. P had notice of Eee's lack of author. to sell. P insured trailer against fire w/ D. Trailer later burned, and D refused to pay: the conveyance was void and, ∴, P had no insurable interest. J/D. P appealed (see p. 86).

Issue: Whether one who knowingly purchases from a thief has an insurable interest in the prop. so purchased w/in the meaning of the Idaho Code?

Held: No. J/D/Aff. — Eee had no title wh he could convey. A Vee takes no better title than that of his Vor. So, a conveyance from such a Vor is void and one who takes under such a conveyance has no I.I. in the prop.

One who has no protectible interest in the insured object is not allowed to gamble upon the possibility of its destruction. A thief, or one who knowing purchases from a thief, has no protectible interest. It would be v. public policy to allow a thief, or one who knowingly purchases from a thief, an insurable interest in the stolen prop.



B^ee may insure in his own name for their full value the goods intrusted to him, & upon proof of loss he may recover their full value, not exceeding the amt. insured, holding the

remainder, after deducting his own loss, as T^ee for the B^or. Such a policy covers the merchandise itself & not merely the interest or claim of the B^ee for account of the B^or.

Commercial Fire Ins. Co. v. Capital City Ins. Co. (p. 101)

Builders — Contractor would have an insurable interest anyway to the extent of his materialman's lien.

Both the builder-contractor and the owner have insurable interests.

Problems, p. 103

(1.) RR would be able to insure to the extent of their tort liability because the RR would have to assume the burden of rebutting RES IPSA LOQUITUR wh will operate against the RR in a suit by one of the adjoining home owners.

(2.) S could recover for the clothing because of mandate of divorce court.

Re, the furniture, S could only have an insurable interest if he could show that the ct. would order him to increase his pymts. to buy more furniture.

(3.) He could allege he was a tenant-at-will and, therefore, had an insurable interest.

Sun Ins. Office of London v. Merz (p.103) — Underwriters case: re-insurance Ks. "...An insurer of prop. acquires BY HIS K an ins. int. you wh he may protect by a K indemnifying him against loss in whole or in part."

"...Ks of ins. upon prop. in wh the insured has no interest at the time of the issuing of the policy are not wagers if he acquires an int. during (!) the life of the policy and retains it at the time when the loss occurs."

"An insurable interest subsisting during the risk and at the time of the loss is sufi to support a policy insuring v. loss by fire."

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In the Creed case, the question is whether ∃ is an II in prop. when you have no interest at the time of making of the ins. K, but on you have an II at the time of loss.

* The Creed case said it is sufi if the interest is acquired after making the K and exists at the time of loss.

Previous cts. had ~~held~~ said contra because they said wagering Ks would be arising. However, even a farmer insures after-acquired prop. on he takes out crop insurance.

Thus, this rule can be applied to reins. Ks, but we may have trouble applying this case's holding in other cases.

Problem, p.106

Ct. found that the builder's interests had sufi crystallized on May 13th so that the builder could have recovered. — This was a 1900 case, and the problem would seldom arise today because of the accepted practice of building Ks.

(CHAP. IV) * THE MEASURE OF INDEMNITY — AND SUBROGATION *

PROPERTY INSURANCE !!

(These formulae will not be on the Ins. exam nor on the bar exam.)

Co-Insurance — the insured is

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deemed a "co-insurer" to the extent of the loss not covered by the policy.

General Rule: Extent of Recovery: Property Ins.

Ordinary recovery under a prop. ins. K is the amt. of the loss. This is an indemnity K, and indemnity means replacing the loss.

Co-Insurance Contracts

N.Y. Standard Coinsurance Clause (p.670) – this is based on a pro rata basis. e.g., Under this clause if B/A is insured for ~~$10,000~~ 1/2 its value and if is a $5000.00 loss, and B/A is worth $10,000.00, as co-insurer you insure 50% of the loss; thus you could only collect $2500.00, 50% of the loss.

But, if B/A is insured for 100% or for a specified amt. (e.g., $10,000), you could recover $10,000, or in the first case, 100% of the loss ($5,000.00).

58-29

A standard policy (e.g. G.S. 58-29) is one required by the state to be used.

G.S. 28-31 – N.C. coinsurance clause: no coins. clause in a K in small print. It must be on the face of the K + in bold type that the K is a coins. K.

G.S. 58-39.1 – limitation of risks: insurer cannot insure for any amt. greater than 10% of its surplus.

G.S. 58-39.3 - reins. Ks.

"Limitation as to amt. and term; Indemnity Ks for difference in actual value and cost of replacement" — G.S. 58-158 — amt. of indemnity of fire ins. The amt. of the K cannot exceed the fair market value of the prop., and all fire ins. Ks on the prop. cannot exceed together the f.m.v. of the prop.

Fire Ins.

"Limit of Liability on Total Loss." — G.S. 58-159 — limitations on total loss liability of insurer. In case of total loss, could only collect from the insurer the full amt. of value of B/A lost, regardless of actual face value of policy. You may be entitled to a pro rata refund of premiums for the excess over the full value of B/A if face value exceeds actual cash value.

Quaere: What does "actual cash value" mean? Evid. of actual cash value is normally an appraisal.

Actual Cash Value v. Fair Market Value — A.C.V. differs from F.M.V. (willing seller + willing buyer under no coercion to sell or buy).

G.S. 58-160 - benefits to mortgagees, in the order of their claims, but not in excess of the insurer's policy liability. See also G.S. 58-175.

Effect of Policy's Non-Compliance w/ Statutory Requirements — G.S. 58-176 - standard fire ins. policy of N.C. is set out in toto. All fire ins. policies must comply. Any variations contrary to this statute are void. And, any omissions from the policy of re-

(I.T. not Care) End of Marine Ins. (not [illegible])

quired provisions will be deemed included by virtue of this statute.

G.S. 58-177 - permissible variations set out.

G.S. 58-178 - requirements of notice to insurer of change of status of B/H, lack of occupancy.

G.S. 58-180.1 - policy issued to husband and wife. Either may insure for the benefit of both or the other.

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Definition [Subrogation - The insurer can go v. the party against whom insured had a right of recovery.

* MARINE INSURANCE *

(p. 112) Gulf Refining Co. v. Atlantic Mutual Ins. Co.

If is total loss in marine situations, you cannot estimate the loss. Thus, marine ins. differs from other types of insurances.

In marine ins. if ship goes down, you get the agreed value. If only damaged, the recovery is the amount of damage.

"In marine ins., the owner of prop. partially insured is deemed co-insurer to the extent of the value not covered by the policy." Vance, p. 101.

See also G.S. 58-175.

The insured, in the case of partial loss of cargo whose sound value is less than the agreed, may recover more than his actual loss since, in computing the indemnity, the cargo must be taken at the agreed value.

End of Marine Ins. (Not too T.I. here)

City of N.Y. Fire Ins. Co. v. Chapman (p.116)

Valued policy here. City ordinance required that any wooden building 50% damaged could not be repaired, and must be destroyed upon the order of the commr. of buildings. Assessed loss = $10,747.48. Value of the prop. before loss = $16,150. Face value of policy = $18,500. — Ct. held that it was total loss even though the house was only 66.486 % damaged.

Rule of Law And Holding

"If by reason of public regulations as to the rebuilding of buildings destroyed by fire, such rebuilding is prohibited, the loss is total, although some portion of the building remains wh. might otherwise have been available in rebuilding. So, also, if the insured building is so injured by the fire as to be unsafe and is condemned by the municipal authorities, the loss is total."

Mc Anarney v. Newark Fire Ins. Co. (p.121)

Because of Prohibition Act, building became obsolete. J/P/ Rvsd. because the jury was not allowed to consider the loss via obsolescence. Jury should consider obsolescence, depreciation, etc., in determining the amount of loss.

Gervant v. New England Fire Ins. Co. (p.127)

N.Y. standard fire ins. policy allowed max. of 80% recovery in case of fire loss.

On insured bldgs. have been destroyed, the trier of fact may, and should, call to its aid, in order to effectuate complete INDEMNITY, every fact and circumstance wh would logically tend to a formation of a correct stmt, or estimate of loss. It may consider any fact reasonably tending to throw light upon the subject.

 CAVEAT: This whole section applies only to Property Insurance.

1 Nov. 62 – missed class.

The doctrine of subrogation has no application to life or personal accident insurance.

An ins. K is a personal agreement between the insurer and the assured, and an insurer has a right to select its assured and determine its own moral risk.

Rule of Law: Subrogation

It is the universal rule that an insurer who has indemnified his assured for a prop. loss is subrogated to the assured's rights against any person wrongfully causing the loss. This is true whether the assured's c/a against the wrongdoer is in tort or K.

Such right of subrogation does not accrue to the insurer until the insured has been fully indemnified for his actual loss.

Any unauthorized release of the tort-feasor or other person primarily liable, whether before or after loss, will discharge the insurer. So, after pymt. made by the insurer, an unauthorized release by the insured of the person primarily liable will entitle the insurer to recover the money paid, unless at the time of procuring the release such person knew of the insurer's pymt. In that event, such a release will not bar the insurer's claim as subrogee.

The insurer can claim to be subrogated only to such rights as inhere in the insured at the time of loss. Just as soon as the loss occurs the insurer's right to subrogation becomes vested.

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These factors should be considered in solving ins. problems.

Re Insurance (exams), consider first:
1. Statutory requirements.
2. Policy provisions (of ins. policy).
3. Case law.

(p. 150) Restrictions on an Insurer's Rights By Subrogation

Since a LIFE INS. K is not a K of indemnity, it necessarily follows that the insurer is not entitled to be subrogated to the claim of the insured's personal representative against one wrongfully causing the death of the insured.

Gen., the right of subrogation of Insurer attaches as soon as the insured is paid.

But, insurer could be barred from going against the third party on the insured has released all of his rights.

But, here we are talking about "restrictions" on Insurer's right of subrogation.

Quare: "If a policy insures only the interest of the mtgee. does the insurer succeed by subrogation to his rights against the mtgor. under the ins. K when it pays the insured?" = Great wt/authority says yes, such a right exists. There is one case contra, and it stands alone.

MORTGAGES: Subrogation

Caveat: A right of subrogation does not inhere in a K of life ins. or personal accident ins.

Otherwise, insured could collect from the tortfeasor and from the insurer.

The policy reason behind subrogation of insurer's rights is to prevent PROFIT by the insured. Thus, no subrogation exists in life ins. situations because no profit can exist there: no value can be placed on life, and deceased cannot recover.

*But, if it is the universal rule that the insurer who has assured for a PROPERTY LOSS is subrogated to the assured's rights against any person wrongfully causing the loss. This is true whether the assured's c/a v. the wrongdoer is in tort or K.

Workmen's Comp. is a creature of statute, and most statutes provide for subrogation. Our W.C. stat. does not provide for subrogation, there can be no subrogation because this is a tort situation, and there is no subrogation, normally, in personal injury cases.* In many jurisdictions, tort claims are not generally assignable.

In N.C., tort claims are probably assignable.

Cerny-Pickas & Co. v. C.R. Jahn Co. (p. 155)

Fire insurance policy here. Jury found that the lessee (D) had negligently caused the fire.

The policy stated that D-lessee must turn over the prop. at term's end in similar condition ("loss by fire and ordinary wear excepted").

*Ct. held that "from the lease as a whole we conclude that the lessee was not to be liable for loss by fire regardless of the cause of the fire, and that the parties intended that the lessor (P) should look solely to ins. as compensation for damage caused by any kind of fire."

The insurer stands in the shoes of the insured.

*Since P-insured (lessor) could not recover, the insurance co. would be unable to recover.

(Chap. 5) * INTERESTS OF OTHERS THAN THE NAMED INSURED *

Fogg v. Middlesex Mutual Fire Ins. Co. (p. 161)

K of fire ins. = personal, and is separable from the transfer of the title of the property insured.

It is personal because the insurer may not even want to insure the assignee.

GEN. RULE — See p. 31, infra, for exception.

In the absence of express provision in the policy, a K of fire insurance is not "assignable" (before loss) to one having an insurable interest in the insured prop. so as to substitute the assignee as the insured in place of the assignor, unless the insurer consents to the assignment.

Read to p. 192

124 A.L.R. 1034

"Loss payable" clause — mortgagees in fire ins. policies are commonly protected against loss by the inclusion in, or the addition to, a policy of ins. of the words, "loss, if any, payable to" a named mortgagee, sometimes adding the words, "as his interest may appear." Such a clause is known as the simple "loss payable" or "open mtge." clause. Of late years, the usual method of protecting mtgees has been by attaching riders to the mtgor's policies, wh are generally known as "standard" or "union" mtge. clauses. These latter clauses, among other things,

provide that "the ins., as to the interest of the mtgee, shall not be invalidated by any act or neglect of the mtgor or owner."

* The issue in this area is whether these clauses ("loss payable") constitute independent Ks between the mtgees and the insurers, or simply have the effect of making the mtgees appointees, or creditor-beneficiaries of the ins. funds.

* Under the simple "loss payable" or "open clause" (or the "standard" or "union" mtgee. clauses), if there is no other stipulation re the interest of the mtgee, the overwhelming weight of authority sustains the proposition that the K as to the mtgee is merely collateral to the principal undertaking to pay the mtgor., + that the mtgee is simply an appointee of the fund. Southern States F. + C. Ins. Co. v. Napier, 22 Ga. App. 361, 96 S.E. 15 (1926) (dictum); Roper v. National F. Ins. Co., 161 N.C. 151, 76 S.E. 869 (1912) (transfer of title); Everhart v. Atlantic F. Ins. Co., 194 N.C. 494, 140 S.E. 78 (1927) (release by mtgor, binding on mtgee); Welch v. Sun Underwriters Ins. Co., 196 N.C. 546, 146 S.E. 216 (1928) (violation of stipulations + covenants in ins. policy).

A policy issued to the mtgor, payable to the mtgee as his interest may appear, will be defeated by any default on the part of the mtgor, unless its terms estab. an independent collateral K between the insurer and the mtgee, as by the "standard mtge clause." In that event the defaults of the mtgor do NOT prejudice the rights of the mtgee not participating therein.

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Death of Insured (p. 164)

Exception

This is an exception to the gen. rule that a fire ins. K is personal. Here, if insured dies during term of policy, the policy will still be good for his personal reps. or heirs.

When handling an estate, check on the conditions of the fire ins on any realty of the estate. Make sure the policy provides for pymt. to personal reps. or heirs in case of death of insured. Most standard policies (N.Y., N.C.) have this provision.

Quaere: What = "present value?" See 178 Cal. App. 2d Supp. 935; 80 A.L.R. 2d 911; 266 F.2d 353, Kohn v. Myers. A.L.R. Digest, Bankruptcy, §46; Am. Jur., Bankruptcy, §862 – 864.

Cass v. Doyle ←

Brownell v. Bd. of Education (p. 165)

D entered into K of sale w/ P, and P gave $3000.00 as binder, sale price being $30,000. Before title passed a year later, fire, and D recovered under the policy that it had had on the school building before K-ing w/ P. P contends that it should receive the insurance proceeds ($28,000). The advantage to P would have been thus: P could have gotten the land also under the K of sale, thus boiling down to P having the land for only $2000.00.

Equitable Conversion

Held, personal K between insurer and D-insured, and there was no risk of loss on P since title

had not passed. So, J/D.

Vogel v. Northern Assur. Co. (p. 168)
Actual loss = $12,000. Amt. of recovery = $15,000. This was allowed, but is unique because of peculiarity in Pa. law.
This assignment was okay because it was after loss had occurred.
This case contrasts w/ previous case. This weakens the "personal K" theory. But, risk of loss had not increased although the amt. of loss had increased.

(p. 175) Flint Frozen Foods v. Firemen's Ins. Co. of Newark
This case turns on the right of subrogation. If debtor (P) had not paid the creditor the debt and insurer (D) had paid, the Cor insurer would have had the right of subrogation to the Cor's rights against the Dor on the debt.
However, since the loss of mtged. prop. does not extinguish the debt, the Cor could have assigned its claim to insurer after latter had paid ins. claim.
Ct. held that since the debt had been paid to Cor in full, the Dor - Asee of the policy stood in the shoes of the Cor - Asor. The Asee could not have collected from insurer because Cor had not lost anything since the debt had been paid.

Goldstein v. Nat'l. Liberty Ins. Co. of America (p.180)

∃ was no valid K here, in its inception because the corp. had no insurable interest. The owner of the corp and the corp. ≠ same legal person, and the owner of the corp. owned the insured res.

HOLDING

Held, "the words of the clause, 'loss shall be payable' amt. to a waiver by the company, in favor of the mtgee, of the effect of any prior or contemporaneous act of the owner wh would have a vitiating effect upon the policy."

Separate K between the mtgees and the insurer.

Effect of Standard Mtgee Clause — "It was an independent agreement partaking in no sense of the character of an assignment of a policy of ins., but one in wh the mtgees were recognized as a separate party, having distinct rights and entitled to receive the full amt. of ins. money, w/o any regard whatever to the owner of the property."

Thus, "a policy of fire ins. in the standard form, wh is void as to the owner, because of his breach of warranty as to ownership and occupancy, may, under the standard mtgee clause, be valid as to a mtgee."

Even **after** foreclosure by mtgee. + mtgee has acquired title to the res, the standard mtgee clause still insures him.

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In the Matter of Future Mfg. Coop., Inc. (p. 185)

This involves whether an insurer can be subrogated to the collateral rights of the insured, e.g., Balance of unpaid purchase price owed by bankrupt-vendee of insured-vendor to the latter (collateral right here).

$13,244.20 was recovered from the insurer. Why not $17,054.88? Because $13,244.20 was the actual value of the merchandise lost by fire.

Ct. held "[the ins. policy clause] by its terms merely subrogates the insurer to any right of the assured to recover for the fire loss for which payment is made under the policy. It does not purport to subrogate the insurer to collateral rights of the assured which may indirectly diminish the loss to the assured."

"... A substantial majority of jurisdictions favor giving the vendee the benefit of the vendor's insurance."

(*) This rule is the California rule. "It places the ultimate burden of the loss upon the insurer, who has been compensated for insuring against such loss rather than upon the vendee who did not cause the loss. While a rule giving the vendee the benefit of the vendor's

Margin notes:

An insurer has no right to be subrogated to the assured's (vendor) right to recover the purchase price from the vendee.

But, when an insured vendor has been indemnified by his insurer for the loss of property subject to a sales K, the tendency has been to give the vendee the benefit of the vendor's insurance rather than to subrogate the insurer to the vendor's right to recover the purchase price from the vendee.

NOTE THIS POLICY ARGUMENT CAREFULLY.

ins. may run counter to the normal concept of an ins. policy as a personal K between the insurer and the assured, this theoretical objection does not weigh as heavily as the equitable considerations favoring the vendee."

In Re Gorman's Estate (p. 190)

Q. What is the value of a life estate? = It is controlled by statute (G.S. 8-47 or 48 - not quite sure); mortuary and ~~actuary~~ annuity tables).

Assume B/A = $10,000. Must first find life expectancy of the life tenant by going to the mortuary table. Then assume life tenant's expectancy = 25 years. Next, go to annuity table and find out value of $1.00 for 25 years. Then take statutory 4½% (or 6%) for dower estate and $10,000 × .06 = $600.00 = annuity. Then, $600.00 × value of $1.00 for 25 years = actual value of life estate.
— Quaere?? (See a Clement here.)

HOLDING: Ct. held here that "Ordinarily, in the absence of any obligation or agreement to insure for remaindermen, a LT who takes out ins. for his own benefit is entitled as against the remaindermen to the full proceeds of the policies in the event of loss. The fact that the life tenant's insurance represents the full value of the prop. is not generally regarded as suf. of itself, to create an interest in the remaindermen."

Problems, p. 192 - See them!

(1.) Upon divorce, tenants by the entirety (only exists among married people) become tenants in common, each w/ an undivided 1/2 interest in the res.

(2.) This result is true because the loss occurred after the divorce and W = a tenant in common + a stranger to the ins. K.

See notes on page 197 cbk.

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Globe + Rutgers Fire Ins. Co. v. U.S. (p. 198)

McCoy Gin Co. was the insured and the CCC (U.S. govt.) had bought some cotton seed per price support program, but the seed was still in the custody of McCoy when the fire occurred w/o fault of McCoy.

U.S. brought suit against appellant to recover for that amt. of cotton seed it owned and wh was destroyed.

"... provided the insured is legally liable for" (clause in ins. K).

Question here is whether the policy provision quoted (see p. 198) furnished ins. protection to the U.S. against the loss of the cottonseed by fire, or covered only the legal liability, if any, of the gin co. resulting from such loss?

Held, U.S. was not "covered" in the sense of the word, but that "the entire tenor and effect of the Ks was ins. against prop. loss by fire and not insurance only against the

legal liability of the named insured for the fire ins. The policies provide prop. ins., — not indemnity or liability insurance.

This ins. was intended to cover the prop. and recovery could be had for any prop. lost by fire so long as insured was legally liable therefor.

Problem #1, p. 201 — seems to go far because ct. said that the customers could recover from the insurer on the ground that the insured would be liable to the customers. But, how? Maybe on bailment theory.

Operation of co-insurance clause is very important.

Hynding v. Home Accident Ins. Co. (p. 202)

LIABILITY INS. — Violation of Co-operation Clause

The issue here was whether under the Calif. act (p. 203) the failure of the assured to cooperate w/ the ins. co. in the preparation of and trial of the action by the injured party may be set up as a defense by the company in the subsequent action against it to recover upon the judgment? HELD, yes.

* GEN. RULE: LIABILITY POLICIES

This was a liability policy, and the gen. rule re third parties under liability policies is that the third party can only recover against the insurer if the insured could have so recovered. So, if insured violates a co-operation clause, he is precluded from recovering against the insured.

Most states have this type

of statute though not all of them extend to all forms of liability insurance.

[In automobile cases, injured party must sue insured first and get judgment. Then, if the judgment is unsatisfied, injured party may go against the insurer.

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[In liability ins., the injured party must first obtain a judgment against the insured, then he (injured - P) may go against the insurer.

[* Reasoning: until judg. was obtained against insured, insured was not liable, and this is liability insurance covering loss.

* There is no liability until the trier of fact says that the facts give rise to same.

Bases (evidence) from which inferences or presumptions can be drawn:

(1.) Established facts - lead to inferences ("may or may not find").
(2.) Conclusive presumption - jury "must find" in the absence of contradicting evid.
(3.) Irrebuttable presumption - if the basic facts are found jury "must find" the ultimate fact (i.e., the irrebuttable presumption)

Fallon v. Mains (1939) (p. 208) (Mass. Case)
D (Mains) owned and operated the car which he had registered in the name of one Stiles because Mains was a bad risk. Mains hit P w/ the car.

Mass. statute said that the co. is inhibited from relying upon such statements as a defense to the satisfaction of the P's claim.

Ct. found that, despite the insurance company's claim to the contrary that it intended to K only w/ Stiles, "the validity of the policy in the circumstances disclosed cannot be disputed by the insurer as against the P."

The statements made by Mains at the time the policy was secured could be found to have been made in behalf of Stiles, who then became the insured.

See Pigg v. Brockman — (p. 213) P contended that the State's immunity from suit had been waived when the state procured some ins. per statute. HELD, the procuring of such ins. would not be suff. to authorize an action against the State for the negl. of the police officer. But, in view of the stipulation in the policy, that the insurer cannot be sued until the amt. of the liab. has been determined in an action v. the insured, the state must continue as a nominal party D for the purpose of trial + judg. in order that the liab. of the insurer, if any, may be thus deter. and fixed. If a verdict is returned v. the state, the judg. entered thereon must in terms provide that the state is not liable for anything + that the judg. only determines the liab. of the insurer + fixes amt. of liab. (assign. - Chap. 6.)

Dickinson v. Maryland Casualty Co. p. 215
"The K of ins. being a unilateral K framed mainly in the interest of insurers, and the insured being compelled to accept the form offered, in order to secure insurance, any ambiguity as to the purpose or meaning of its terms, or what property was intended to be covered, will be construed in favor of insured.

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(Chap. 6) * Insurable Interest in Life *

Ins. Int. generally: The criterion for determining the presence of an insurable interest is loss or detriment to be suffered by the insured upon the happening of the peril insured against.

So, while LIFE ins. cannot be regarded as a K of indemnity, it is clear that the basis of an insurable interest is indemnity.

1-95 G.S. gn. c.

In prop., the insurable int. must exist before and thru the happening of the event insured against.

But, in life, the insurable interest need not exist at the time of death.

Public policies underlying restrictions on life ins. (viz, an insurable interest):
(1.) To prevent or minimize wagering.
(2.) To " " " homocides.

Parts of life ins. K cos. - see G.S. 1-95.

Life ins. K v. fire ins. K — fire ins. is indemnity ins. and depends upon the value lost. Life ins. K is not an indemnity K, and the bene. may recover the face value whatever it is. i.e., "All or nothing at all."

Partners and Stockholders

G.S. 58-204; what = ins. int. between stockholders or partners?? They all have an ins int in each other's life provided one ptnr, by K, will purchase the deceased ptnr's interest in the ptnrship. Same for shareholders.

Eer has ins. int. in Eee. The Eer could be the corp.; and the Eee could be the pres. of the corp. or a vital member (e.g., Jack Benny of the J. B. Corp).

Relatives have an ins. int. in each other.

Earl of March v. Pigot (p. 225)
In 1771, wagers on life of another were not considered v. pub. policy.
The St. 14 Geo. III, c. 48 (1774) outlawed wagering on lives.

Dalby v. The India & London Life-Assurance Co. (p. 227)
* The ins. int. is required only at the time of the making of the K.
"If y is an int. at the time of the policy, it is not a wagering policy, and the true value of that int. may be recovered, in exact conformity w/ the words of the K itself."

(Read at least five cases ahead.)

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If y was not orig. an ins. int., nothing between the parties can make the policy valid.*

Insurable Interest in Life.

Ins. Interest - a type of int. that the policy holder wishes prolonged (e.g., for the sake of love and affection) rather than one the holder wishes shortened.

* This is so because a K cannot be made valid when it is against public policy. On y is no ins. int., the public policy v. wagering Ks prevails.

Worthington v. Curtis (p. 233)
Only the insurer, absent statute, ~~only~~ can defend on the ground of lack of ins. interest. (*) The absence of ins. int. makes the K voidable as between the insurer and the insured.

Conn. Mutual Life Ins. Co. v. Schaefer (p.234)
H and W took out mutual life ins. Ks during their marriage, but were later divorced. H later died.

Issue: Did the insurable interest cease by reason of the divorce of the P and her deceased ex-husband?? = No.

Holding: (1) There must be an int. AT THE TIME THE INS. IS EFFECTED, but ~~[illegible]~~ it need not continue until death.

* [(2) A life policy, originally valid, does not cease to be so by the cessation of the assured party's interest in the life insured.]

Creditors cannot reach the proceeds of life insurance, unless the estate of decedent was the beneficiary.

Read N.C. statutes on this matter, + " problems, p. 237.

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(PAGE 237) - Problems

REFERENCE ON GEN'L law of INS. — APPLETON (ENCYCLOPEDIA). See this.

(1.) Should the ins. proceeds be the property of the partnership assets, or the property of the surviving partner? = Upon death of ptnr. A, the ptnrshp. is dissolved. But, generally, ptnr. B would be deemed trustee of all assets to satisfy creditors. — Ptnr. B would most certainly be entitled to his pro rata share.

Murder of insured by beneficiary, regardless of reason, = constructive trust in bene. for the estate of the insured.

(2.) Cor has an ins. int. in his Dor up to the amount of the debt. Barring of debt after making the ins. K + before death will not stop collection by Cor pro rata because in life ins. the crucial time for ins. int. is the time of making the K. Same in (#1) (4,400, if ptnr. B = beneficiary, he would take the full amt. of ins. proceeds; if the ptnrshp. = bene., ptnr. B would take only his pro rata share).

In #1, usually the amt. of the policy is only suffi to cover the ptnrshp. debts; so, the surviving ptnr. will seldom take much, if anything.

→ Ga. Ins. Code (1960), § 56-2404 = insured has an "unlimited interest in his own life." See also N.C. G.S. 58-204.1, -204.2, -204.3 + N.C. Laws, 1951, ch. 283.

N.Y. law requires consent of CQV to his being insured except as between H and W, and any supporter of under-15 child.

Bromley's Admr. v. Washington Life Ins. Co. (p. 241)
The assignee had no ins. interest

The payee must have an insurable interest in the life, not the death, of the CQV. K here was VOID as a mere wager.

The law does not allow one who has no insurable interest in the life of another, to insure it for his benefit, for the reason that it is a mere wager and holds out a temptation to fraud, the insurer having no interest in the life of the assured and having a direct interest in his death.

N.Y. RULE: consent of CQV to ins. on his life is necessary for validity of the ins. K except:

(1.) As between H and W.

(2.) As between minor and one who has an ins. int. in minor's life who seeks to insure him, and one on whom a minor (under 15 here + above) is * dependent for support or maintenance.

and assignor simply was trying to make $50.00 on the assignment.

* If you take out insurance on your own life in good faith, you may later assign to one w/o an ins. int. in your life. This supports the view that insurance is merely speculation because it is one of the best ways to create an estate.

Here, assignor-insured did not take out his ins. K in good faith; he was just trying to make $50.00 on the deal.

The law does not allow one who has no insurable interest in the life of another, to insure it for his benefit, for the reason that it is a mere wager and holds out a temptation to fraud, the insurer having no interest in the life of the assured and having a direct interest in his death.

The person making the ins. K must have an ins. int. in the life of the insured at the time of making the K.

Effect of Incontestable Clause — That the incontestable clause, which cuts off the insurer's defense of fraud or misrepresentation by the insured, does not bar the defense of lack of insurable interest is the prevailing view. Y is some author.

to the contrary.

Effect of Same on Defense of No Insurable Interest

Waiver and Estoppel – Both in prop. and life ins. the prevailing view is that no estoppel or agreement by the insurer will preclude it from later raising the defense of lack of ins. int.

Wagering leads to an unearned gain; not socially productive.

PROBLEM, PAGE 245

This is an illegal K because the survivors are interested only in the death of the other member, not their continued life.

Grigsby v. Russell (p. 247)

EXCEPTION TO THE GENERAL RULE

Leading case on proposition that the orig. insured's assignee need not have an ins. int. on the insured procured the K on his own initiative and w/o this assignment in mind.

A PERSON WHO HAS PROCURED A VALID POLICY OF INS. ON HIS LIFE CAN VALIDLY CHANGE THE BENEFICIARY BY DESIGNATING AS THE NEW BENE. A PERSON WHO HAS NO INSURABLE INTEREST.

BRAY V. MALCOM, 194 GA. 593, 22 S.E. 2d 126 (1942).

Generally held that only the insurer can raise the defence of lack of ins. int.

Assignment: Chap. 7, p. 270.

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(CHAP. 7) * THE INTERESTS OF BENEFICIARIES AND ASSIGNEES *

(LIFE INSURANCE)

What are the legal consequences of a provision in an ins. K by which the insurer can choose its payee? This will be considered in this section.

4c

Davis v. Modern Industrial Bank (p. 271)

If the insured has the policy w/in his control, and has the power to change his beneficiary or execute an assignment, any change of bene. or assignment in compliance w/ the provisions of the insurance K will be ok.

Assignments

After loss suffered, a fire policy, as well as a policy of any other kind, becomes a mere money claim, and is as freely assignable as any other chose in action. VANCE, p. 96.

A life policy is a contingent chose in action, which, in the absence of a stipulation to the contrary, is assignable w/o the assent of the insurer.

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hypo: H insured B making H beneficiary. H died.
W, wife of H, cont'd. paying premiums; and asked ins. agent to make her beneficiary, but no dice.
B requested S to be beneficiary.
B died.
W v. S. Who prevails?
Johnson thinks the wife would prevail. This case never reached ct., but the ins. co. returned W's premiums and paid ins. proceeds to S.

NOTE: Requirements re the manner of change of bene. are conds. solely for the benefit of the insurer.

Davis case: assignment, if properly made, can be valid. This case represents the proposition that an assignment can be valid even though the beneficiary was not changed per provision for change of bene. so long as the assignment was valid.

GEN. RULE

"... An assignee of a policy containing a clause permitting a change of bene. and an assignment of the policy secures a right in the proceeds of the policy superior to the rights of

the named bene."

The gen. rule universally is that an assignment of a policy by the insured will not convey any interest as v. the bene. named in the policy unless the right to change the bene. is reserved y/in. It makes no diff. what the interest of the bene. is denominated, as a vested interest or by some other name. In any event it is such an interest that the bene. cannot be deprived of it w/o consent unless such right is reserved in the policy.

TAXES

On the insured retains control of the policy and has power to change the bene., the ins. proceeds for tax purposes are considered (before transfer to bene.) part of insured's estate.

GEN. RULE: IRREVOCABLE BENEFICIARIES

On bene. is irrevocable, the ins. proceeds are deemed to belong to the beneficiary's estate and any change w/o bene.'s consent would be void.

COMMUNITY PROPERTY STATES Cal., Tex., Wash.

In community prop. States, the H. cannot change the bene. of an ins. policy on his life, so as to divest the wife's claim to it w/o her consent, if the premiums were paid out of community prop., thus making the policy a community asset.

O'Brien v. Elder (p. 278)
Wife of deceased insured was bene. of three policies. Then W and insured were divorced and there was separation agreement wherein W relinquished her interest in the policies, but when insured died the W was still the named bene. In the separation agreement W relinquished "all claims" although the ins. policies were not specifically mentioned.

Ct. held that P - administratrix prevailed over W.

EFFECT OF DIVORCE: Divorce alone does not automatically divest the wife of the proceeds of life ins. in wh she is the named bene. The beneficiary's interest may be

EFFECT OF AGREEMENT BY BENE. TO RELINQUISH RIGHTS: terminated, however, by an agreement between the parties wh may reasonably be construed as a relinquishment of the spouse's rights to the ins.

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Metropolitan Life Ins. Co. v. Sandstrand (p. 284)

WAIVER OF OBJECTIONS: On insurer brings bill of interpleader, raising no objection in its own behalf, the insurer has waived any question as to completing the change of bene. in accordance w/ the strict terms of

the policy.

Compliance w/ Requirements (form) for Change of Beneficiary.

A substantial compliance by the insured w/ the terms of the policy is suff. to effectuate a change of beneficiary.

Here, the first bene. refused to turn over the policy to the insured to allow him to change the beneficiary from Elsie to Esther.

The insured must do all that he reasonably could be expected to do in the circumstances in order to effectuate his intention to change the bene. in the policy. If an insured meets such requirement in a proper case his action is given effect even though such a change had not reached the home office of the insurer before the death of the insured.

Does the insured have to consent to another insuring his life? If A has an ins. int. in B, will a policy taken out by A on B be valid w/o B's consent ??? See margin note, p. 44, supra.

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Hundertmark v. Id. (p. 286)

A K not to change the bene., entered into by an insured and his designated bene. for a valuable consideration, is binding as between the insured, or his volunteer, and the contractually determined bene. will be enforced in equity.

CANCEL

RULE OF LAW

A Beneficiary named pursuant to a definite agreement that he shall be so named, by virtue of a

valuable consideration moving from him, acquires a right in the policy or proceeds you that will be protected against subsequently named beneficiaries who have no superior equity.

Brown v. Metropolitan Life Ins. Co. (p.289)

* The "facility of payments clause" was found to be governing. The insurer paid mistakenly, but in good faith, to Sally who was apparently insured-deceased's wife, and under the facility of pymts. clause the ins. co was protected.

Q: Would the insurer be protected on it pays one other than a named beneficiary?? = (Here, there was no named bene. other than the estate.) Probably not. Johnson not sure, but feels fairly certain that the insurer would pay only to the named bene.

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PART II * SELECTION AND CONTROL OF RISKS *

RULE OF CONSTRUCTION — In Ins. Law, if there is any ambiguity it will be construed against the insurer. Reason: insurer was the drafter and offeror.

* CHAP. 8 The INSURED EVENT AND EXCEPTED CAUSES *

British & Foreign Marine Ins. Co. Ltd. v. Gaunt (p.304)

This was an all-risk policy

"ALL RISKS" POLICIES

but it is alleged by the D-appellant that this loss was not w/in the scope.

B/P

The B/P is not on the insured to prove how the loss occurred, but only to show that the cause was not a natural one.

RULE

The loss must be due to some fortuitous circumstance or casualty. The damage here proved was such as did not occur and could not be expected to occur in the course of normal transit.

The Insured's Burden

* The insured's special onus is discharged when he has proved that the loss was caused by some event ~~caused~~ covered by the general expression, and he is not bound to go further and prove the exact nature of the accident or casualty which, in fact, occasioned his loss.

Insured's Burden in "ALL RISKS" POLICIES

* When the insured avers loss by some risk coming w/in "all risks," as used in this policy, he need only give evidence reasonably showing that the loss was due to a casualty, not to a certainty or to inherent vice or to wear and tear.

PROBLEMS (PAGE 307)

1.) This was an inherent defect, and loss was not due to an outside agent over which neither the insurer nor the insured had control. No recovery.

2.) Insured may recover. This loss is w/in the probable scope of intended coverage, and the cause was an outside, independent agent — insects.

#3. (cont'd.) held, a marine insurer is not liable for loss due to inherent vice of subject matter unless such liability is expressly assumed in the policy.

It is the gen. rule that, in marine ins. law, the insured bears the burden of proving that his loss was caused by an insured peril.

In action on policy of marine ins. under these facts, evid. was insuff. to establish that damage to shoes had been caused by an insured risk. 100 F. Supp. 196 (1947), Goldman v. R.I. Ins. Co.

(3.) Ct held no recovery, but the result is questionable on one hand but supportable on the other hand because they were (the shoes) enclosed in glassene bags.

(4.) No "all risks" policy here. Recovery was allowed because it is enough to show that the loss did not occur from any non-insured cause. You need not show the exact cause, however.

(5.) (a.) YES.
(b.) No: ordinary wear and tear.
(c.) YES: vandalism and in/in a comprehensive policy.
(d.) Could go either way: falling objects are covered, but collision is not.

Fidelity Trust Co. v. American Surety Co. of N.Y. (p. 308)

Policy covered "any loss ... on ... any securities ... or other written instruments which prove to have been counterfeited or forged as to the signature ...."

Ct. applied usual meaning of the word "counterfeit," and recovery was allowed.

HOLDING AND RULE OF CONSTRUCTION

Held, if y is doubt about the meaning of language under those circumstances (K was by professional surety co. which knew its biz & did biz for a consideration and used the term "Blanket Bond"), it is not to be resolved in favor of the one who chose the words

and, as a biz transaction, issued the bond to another. The very term "Blanket Bond" indicates that its coverage is to be wide and it is not unfair to interpret the document in this fashion.

INTERPRETATION OF TERMS: "In a biz transaction we think that the use of the words ~~it~~ is to be taken in accordance w/ common biz usage as much as possible. Common usage would indicate that "counterfeit" is something that purports to be something that it is not."

Owens v. Milwaukee Ins. Co. of Milwaukee Wisconsin, (p. 311) - partial structure fell into brush fire on P's premises. Ct. HELD this to be a "friendly" fire and refused P recovery. It is the rule by an overwhelming wt. of authority that "a fire wholly confined to the place where it is intended to be is not a fire w/in the meaning of a fire ins. policy and damages resulting therefrom are not covered by the K; but if it escapes its intended place and burns outside its normal confines it becomes a fire w/in the meaning of the policy, and any loss occasioned thereby is compensable."

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PROBLEMS (p. 314)

(1.) The average layman probably understands that his fire coverage means accidental fire.

It was held in Owens v. Milwaukee Ins. Co. (p. 311) that a fire wholly confined to the place where it is intended to be is not a fire w/in meaning of a fire insurance policy and damages resulting therefrom are not covered by the K but if it escapes its intended place and burns outside its normal confines it becomes a fire w/in the meaning of the policy and any loss occasioned thereby is compensible.

(2.) This was a hostile fire, and recovery would probably be allowed.

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(3.) No recovery here. But, good argument could be made that the fire of the match was the proximate cause, and ∴ recovery should be allowed.

(4.) Ct allowed recovery here saying that the fire was the proximate cause of loss of the goods using the "but for" test. (Watch out for this on EXAM, says Johnson.) Calif. case.

(5.) (Watch out for this on exam, too.) Ct. allowed recovery here too, using the same reasoning as the Calif. ct did in #4.

hypo: Suppose you have fire ins on your house. The house next door catches on fire and is so close that the fire ~~ins. co.~~ dept. waters your house and you sustain damage from water. Could you recover under your fire ins.? Johnson says he feels that recovery should be allowed, the gen. test being one of proximate cause upon the general understanding of the layman.

GENERAL TEST: PROXIMATE CAUSE

N.Y., N.H. & H.R. Co. v. Gray (p. 315)

* The Lloyd's Underwriter was held liable. * Negl. is not a defense to recovery — only

Wilful misconduct = Knavery or design.

wilful misconduct.

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(p. 319) Burr v. Com. Travelers Mut. Acc. Assn. of America

What is an accident? See notes on p. 325 cbk.

In the absence of a "violation of law" clause, public policy does not preclude recovery by the innocent beneficiary, although the insured's death occured while he was engaged in an illegal activity.

"Disease or infirmity" clause - This clause, or a similar one, has been held not to exclude liability for the result of an accident which might not have been serious had the insured not had some "normal" peculiarity or weakness, such as a dormant duodenal ulcer, or "normal" arteriosclerosis. Yet the exclusion sometimes does preclude recovery on the K (Florida, Kentucky).

In N.Y., no distinction is made between "accidental death" as that phrase is used in an ins. policy and death by accidental means nor between accidental means and accidental results.

Accidental death means death by accident, and excludes suicide; death occurring thru "accidental means" in this case and under these circumstances is the same as death occurring "by means of an accident."

e.g., Sunstroke is not "accidental means", but resulting death is an accidental result. This would be covered under the holding of this court; thus, sunstroke would be deemed "by accident or accidental means" w/in the meaning of the terms of the policy.

* An ins. policy can exclude anything the parties K to exclude.

hypo: what about a Christian Scientist who refuses medical aid? Suppose parents of an injured child refused medical aid on the same grounds?

Auto. Owners Safety Ins. Co. v. Baker (p. 326)

Disability ins. policy here. Insured was brick-layer's helper, was injured in auto wreck, and was unable to pursue his trade. He was permanently disabled. But, to sustain his family, insured bought a tourist court & advised his wife sometimes in its operation.

The court adopted a rule of liberal construction of an ins. K containing provisions such as here, and P was allowed recovery.

The ins. policy requirements were held to be evidentiary only, and not prerequisite to recovery on insurer admitted insured's total disability. i.e. The facts will be considered in each case. TP A practical construction of such provisions in an accident policy requires the taking into consideration the nature of the insured's educational background and the business, experience and capabilities in regard to such business.

(p. 330) Farm Bureau Mut. Auto Ins. Co. v. Hammer

Policy excluded intentional injury by the insured from the coverage of the policy; and it is clear that wilfully driving one's car into another constitutes assault and battery upon the other's occupants.

* The binding effect of a judgment against the insured does not extend to matters outside the scope of the ins. K, and that the Ins. Co. is neither obligated to defend nor bound by the findings of the court if the claim against the insured is not covered by the policy.

The judgment v. the

indemnitee does not decide issues as to the existence and extent of the duty to indemnify, and that in a subsequent action the indemnitor may show that the circumstances under which he was required to give indemnity do not exist.

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Jernigan v. Allstate Ins. Co. (p. 335)

whether an assault comes w/in the coverage of the policy as being bodily injury "caused by accident." HELD, Viewed from the standpoint of the injured party (minority view), the fatal injury sued on and the prop. damage were the result of an accident w/in the meaning of the policy before us.

"It is apparently the more widely accepted view that an assault constitutes an "accident" and that injuries ∴from are "accidentally sustained," w/in the meaning of liability ins. policies.

The determination whether an assault constitutes an accident appears to depend on the person from whose standpoint the court views the occurrence.

J/P-appellee / Rvsd.

Ct. said that although the insured's aunt intentionally drove the insured's car against and over deceased, there was "accident" w/in the meaning of the policy.

This was a case of first impression.

Quaere, however, whether this wasn't an "accident" w/in the true meaning of the word from the point of view of the victim any-way. It was not natural death, that's for sure.

Problems, (p. 339)

1.) a. Did the policy exclude illegality by terms or by construction? = If not, recovery should be allowed. So, the beneficiaries were allowed recovery.

But, if they had asked for double indemnity, no recovery because of express exclusion or ex-

ception of illegality.

Husband v. Wife ??

(2.) Would H have a c/a v. his W? In N.C., yes. under C.L., no.

The result here would depend on the same reasoning as #1.

Met. Life Ins. Co. v. Conway (p. 339)

Exception v. Warranty discussed here.

The ins. co. sought to attach "riders" to the ins. policy.

The Co. is now petitioning the Ins. Commissioner to allow them to attach riders to any policies subsequently issued, wh. rider would limit their liability.

Court found this was an exception and did not violate the minimal stat requirements. If it had been a warranty, the rider would not have been allowed.

Cardozo, C.J. – statute provided that policy and rider shall be approved by the superintendent of insurance. If approval is omitted, the policy or the rider is not invalid ipso facto, unless in conflict w/ the provisions exacted by the statute.

An incontestability clause means only this, that w/in the limits of the coverage the policy shall stand, unaffected by any defense that it was invalid in its inception, or thereafter became invalid by reason of a cond. broken. ¶ Must distinguish between a denial of coverage and a defense of invalidity. In event of violation of the latter, the policy, at the election of the insurer, is avoided altogether, and this tho' the death is unrelated to the breach. In the former, the policy is still valid in respect of risks assumed. ¶ If there has been no assumption of risk, there can be no liability to pay.

(Chapter 9.) Warranties As Affecting the Risk

DEFINITION OF "WARRANTY"

By the prevailing and better usage a WARRANTY is a term of the ins. K wh prescribes as a condition of the insurer's promise the existence of a fact

wh diminishes the probability of the occurrence of an insured event, or the non-existence of a fact wh increases such probability.

MATERIAL MISREPRESENTATIONS

Involved in this area is the question of "material misrepresentations." If it's a mat. misrep., the ins. K would have been void. But, on a misrep. does not relate to the risk insured against, e.g., Insured says he does not have diabetes, and is later killed by car, it has been held that this would not be a mat. misrep. But, what if the insurer would not have insured the insured at all, if diabetes were known?

TEST: "DOES THE MISREPRESENTATION RELATE TO THE RISK?"

ENGLISH GEN. RULE

Whether it increases or decreases liability, when ∃ is a warr. and same is breached, the policy is void.

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Q. What is the diff. between warrs. and representations??? = If it is a warr. it is a cond. or contingency wh must be met, and any breach of it avoids the policy; and it is immaterial whether the risk is lessened or heightened as a result of the breach.

P = underwriter
D = insured

De Hahn v. Hartley (p. 346)

Policy warranted that the ship would have 50 hands or more when it left Liverpool, but it did not have but 46 hands aboard. The policy, however, was to cover a leg of the trip from Africa to the Br. W. Indies. But, the court held it made no difference because warranties must be absolutely STRICTLY complied w/, and if there is only substantial compliance, that is not suff.

HOLDING

ENGLISH RULE

"It is perfectly immaterial for what purpose a warr. is introduced; but, being inserted, the K does not exist unless it be LITERALLY complied w/."

Wood v. The Hartford Fire Ins. Co. (p. 350)

"DESCRIPTIVE WARRANTIES"

A WARRANTY is any stmt. or description, or any undertaking on the part of the insured, on the face of the policy, which relates to the risk.

The warranty must relate to the risk in order for its breach to avoid the K.

On ∃ is a breach," it is immaterial to what cause non-compliance is attributable."

"It is immaterial whether the non-performance or violation of the warranty be w/ or w/o the consent or fault of the insured."

This case follows the strict English view.

Ins. K covered a "paper mill," and during the period of coverage but before the fire occurred, insured put in one (1) grain mill. Was this a breach? Q. Did "paper mill" relate to the risk and ∴ = a warr.? YES. Court said this was merely a descriptive warranty, and that ∃ was no breach, however. "Paper mill" was merely descriptive of property, not of an operation, and prop. was what was insured. i.e., Ct. held that this was still a paper mill; that this was a descriptive warr. And ∃ was no breach.

This was an express warr. and a cond. precedent, but quaere, to what was it precedent: K or liability? (Johnson did not answer this question.)

The language here and some of the reasoning are confusing. Also, the finding is debatable.

Warrs. in Statute Law —

Stats. have not changed the basic law very much. It means there are certain warrs. that must be included in ins. Ks.

67 MUST ASK YOURSELF WHETHER A GIVEN TERM OF THE POLICY = A WARRANTY? IF IT IS NOT A WARR., WHAT IS IT, AND WHAT IS THE RESULT OF NON-COMPLIANCE THEREWITH?

hypo:

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On A moves goods out of the insured warehouse but moves the goods back in later. Then, fire occurred. Is the policy void? — Split here. Many (Majority) say this would only be a temporary breach, and the policy would be valid so long as the goods were back in the insured warehouse at the time of loss.

TEMPORARY BREACH

Fireman's Ins. Co. v. Alonso (p. 358).

HELD, that the destruction of the property by fire at a place other than that designated by the policy constituted a defense available to the ins. co.

GEN. RULE RE CHANGE OF LOCATION

Fidelity – Phenix Case (p. 363)

"Well estab. N.C. rule that if a policy of ins. contains a stipulation material to the risk, on breach of wh the policy is to be avoided, ∴ can be no recovery if the stipulation is not fulfilled."

"The violation of a continuing cond. wh works the forfeiture of a policy of ins. merely suspends the ins. during the violation, and if it is discontinued during the life of the policy and does not

MAJORITY RULE RE TEMPORARY BREACH

exist at the time of the loss, the policy revives and the insurer is liable." — The Majority View.

* Minority View — temporary breach = permanent voiding of ins. K.

DEFINITION — Temp. Breach — a breach wh ceased to exist before the loss occurred.

Fidelity + Deposit Co. of Maryland v. Friedlander (p.371)

RULE OF CONSTRUCTION — "Where, in an ins. policy, a term is open to two or more constructions we are required to adopt that one more favorable to the insured."

"Employee" may mean anyone who renders services to another; it properly describes any one who renders labor or service to another.

Ralph Perri, Inc. Case (p.375)

Issue: Was the custodian of the payroll "accompanied" by an armed guard w/in meaning of the policy where the armed guard followed behind the payroll car in his own car? = Held, NO. But there was strong dissent.

Re "substantial compliance", see p.374, VERY IMPORTANT!!

"Substantial Compliance" means that the facts that occurred were functionally as good, from the standpoint of the risks, as the facts required by the warranty." It is "the adoption of precautions, if not exactly those stated in the application, precautions intended to accomplish the same purpose, and which may be reasonably considered equally or more efficacious.

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(p. 376) Diesinger v. American & Foreign Ins. Co.

$7,891.00 of jewelry on display in window was stolen. Policy said that not more than $5,000.00 would be displayed in window. Was ∆ br/warr. that would avoid the policy??

MAJORITY AMERICAN RULE

Held, ∆ was not a material breach because the risk was not increased. So, the court allowed full recovery by insured. — This is the N.Y. Rule re warranties (and Penn.).

"A warr. proper, carrying w/it the avoidance of the policy in case the fact is not as warranted, is ltd. to the warranty of an existing fact and will not be extended so as to include promises or agreements as to future acts. Breach of the latter will not be held to avoid the policy unless they are material to the risk insured against."

Notes (p. 378)

(1.) No, but that it was not a material breach wh. was relevant to the loss.

POLLOCK v. CONN. FIRE INS. CO. (p. 379)
H + W were joint tenants. Warr. in policy required H to be sole owner. Ct. refused P (H) recovery because the nature of fire ins. is such that the extent of interest in the prop. is material, and this = breach of a material warranty.

"On an ins. company issues a policy w/ knowledge of the true state of title, it is bound by such knowledge, but the knowledge referred to must be actual and not constructive. The public record of encumbrances and other instruments affecting an insured's title will not charge an insurer w/ notice of such matters."

GRAHAM v. AMER. EAGLE FIRE INS. CO. OF N.Y. (p. 381)
Policy said that ins. in excess of the limits allowed would avoid the policy. H + W (Ps) got other ins. on the property after the first policy. — Ct. denied recovery: A policy insuring the interests of Ts in common and providing v. additional ins. is avoided if one of the Ts in C procures additional insurance, even though this covers only his interest in the property.

Ct. here does not go into materiality of the breach because the ct. adheres to the English rule re strict adherence to warrs. on a br. of same = avoidance of the ins. K.

LEE v. TRAVELERS FIRE INS. Co. (p. 385)

Ct. allowed recovery in this La. case.

The majority of states follow the N.Y. Rule re materiality relating to increase of hazard by the breach. The minority follows the strict English rule: any breach voids the ins. K.

(*) "Has y been an increase in the hazard" is a question that must allow consideration of the knowledge of the insured and the consequent temptation of the insured to deceive insurer.

STIVERS v. NATIONAL AMER. INS. Co. (p. 390)

Non-occupancy of the premises for more than X no. of days may result in terminal breach, but the policy will be "re-instated" if loss occurs during re-occupancy.

Exam —
What question does each chapter bring up? Know them generally!

Finis!